

PRESIDING OFFICER'S  
RULING NO. R97-1/96

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268

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Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING  
GRANTING PROTECTIVE CONDITIONS

(February 9, 1998)



On February 4, 1998, RIAA et al.<sup>1</sup> filed a request for the imposition of protective conditions for a survey done by RIAA et al. witness Gary M. Andrew. Request for the Imposition of Protective Conditions (Protective Request). The Protective Request indicates that responses to Postal Service interrogatories based on this survey,<sup>2</sup> which was conducted on certain members of the associations sponsoring Andrew's testimony (RIAA et al.), would require disclosure of information that might be interpreted to violate the *Federal Trade Commission Guideline that survey information from competitors should not be disseminated unless more than three companies have contributed to the data pool and the data from none of the companies represents more than 50 percent of all data reported. See, e.g., Advisory Opinion: Statistical Reporting Program Implemented Through a National Institute, 77 FTC 1728 (1970).* A February 6, 1998 follow-up filing by RIAA et al. identifies the interrogatories whose responses are

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<sup>1</sup> Recording Industry Association of America and Advertising Mail Marketing Association (RIAA et al.).

<sup>2</sup> Although not directly named in the Protective Request, the survey referred to by RIAA et al., and now the subject of this Ruling, concerns Standard (A) parcel data from parcel shippers and is described more fully on pages 24 and 25 of witness Andrew's direct testimony. See RIAA et al.-T-1 at 24-25.

requested to be subject to the protective conditions as USPS/RIAA et al.-T1-19 and 20.<sup>3</sup> RIAA Initial Specification of Responses Subject to Protective Conditions.

RIAA et al. have submitted proposed protective conditions based on those recently approved in Presiding Officer's Ruling R97-1/5, with minor modifications designed to protect the Federal Trade Commission's interests by preventing a threat to competitive conditions. RIAA et al. also asks that the protective conditions generally apply to matter designated by RIAA et al. as confidential and similarly protectible, such as responses to follow-up inquiries.

I will grant the Protective Request by RIAA et al. so that interested participants can gain access to this information immediately. The protective conditions granted, however, are limited to those responses submitted by RIAA et al. to USPS/RIAA et al.-T1-19 and 20. Should protective conditions be necessitated for responses to follow-up inquiries, I will promptly consider such requests.

#### RULING

1. The Request for the Imposition of Protective Conditions, submitted by RIAA et al. on February 4, 1998, is granted, as specified in the Ruling herein.

2. The protective conditions applicable to RIAA et al. responses to USPS/RIAA et al.-T1-19 and 20 are set forth in Attachment A.



Edward J. Gleiman  
Presiding Officer

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<sup>3</sup> The follow-up filing requested protective conditions for interrogatories USPS/RIAA et al.-T1-19 (a) and -T1-20. However, as USPS/RIAA et al.-T1-19 does not contain subparts, I am treating RIAA's request as referring to interrogatories USPS/RIAA et al.-T1-19 and 20.

## STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to the RIAA et al. answers to Postal Service interrogatories USPS/RIAA et al.-T1-19 and 20. These responses are now designated as "CONFIDENTIAL" (the "RIAA confidential material"). Individuals seeking to obtain access to that material must agree to comply with these conditions, and complete the attached certifications.

- (1) Only those persons who are either:
  - (a) employees of the United States Postal Service, Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
  - (b) counsel to participants in Postal Rate Commission Docket No. R97-1; or participants not represented by counsel; or
  - (c) experts employed by such a participant for purposes related to the litigation of Docket No. R97-1; shall be granted access to the RIAA confidential material.
- (2) No person granted access to the RIAA confidential material is permitted to disseminate that material in whole or in part to any person not authorized to obtain access under these conditions.
- (3) The final date of any participant's access shall be:
  - (a) the date on which the Postal Rate Commission closes the evidentiary record in Docket No. R97-1; or
  - (b) the date on which that participant formally withdraws from Docket No. R97-1; or
  - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R97-1 participant on whose behalf that person obtains access; whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. R97-1 of the termination of any such business and consulting arrangement or retainer or affiliation which occurs before the closing of the evidentiary record.

- (4) Immediately after the Commission issues its recommended decision in Docket No. R97-1, a participant (and any person working on behalf of that participant) who has obtained a copy of the RIAA confidential material shall certify to the Commission:
  - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
  - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
- (5) The duties of any persons obtaining access to the RIAA confidential material shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the material, as well as to the entire material.
- (6) All persons who obtain access to the RIAA confidential material are required to protect the material by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the material as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
- (7) These conditions shall apply to any revised, amended, or supplemental versions of the RIAA confidential material filed in Docket No. R97-1.
- (8) The duty of nondisclosure of anyone obtaining access to the RIAA confidential material is continuing, terminable only by specific order of the Commission.
- (9) Any Docket No. R97-1 participant or other person seeking access to the RIAA confidential material, by requesting access, consents to these or such other conditions as the Commission may approve.

### CERTIFICATION

The undersigned represents that:

Access to the RIAA confidential material in Docket No. R97-1 has been authorized by the Commission.

The copy of that material that I have obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R97-1.

I will maintain in strict confidence the RIAA confidential material in accordance with the conditions as set out above.

Name \_\_\_\_\_

Firm \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**CERTIFICATION UPON RETURN OF  
PROTECTED MATERIALS**

Pursuant to the Certification which I previously filed with the Commission with respect to information received in accordance with Presiding Officer's Ruling I, on behalf of myself and/or the party which I represent (as indicated below), affirm as follows:

1. I have maintained in strict confidence the information provided by the Commission in accordance with Presiding Officer's Ruling.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R97-1.
3. I have surrendered to the Postal Rate Commission/destroyed all copies of the information which I obtained or which have been made from that information.

Name \_\_\_\_\_

Firm \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_